

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

WILLIAM TROY McALISTER,

Defendant-Appellant.

UNPUBLISHED

February 10, 1998

No. 195488

Shiawassee Circuit Court

LC No. 90-006213 FC

Before: Markey, P.J., and Doctoroff and Smolenski, JJ.

MEMORANDUM.

In a 1990 jury trial, defendant was convicted of felony murder, MCL 750.316; MSA 28.548 (armed robbery), four counts of kidnapping, MCL 750.349; MSA 28.581, and three counts of assault with intent to commit murder, MCL 750.83; MSA 28.278. He received the statutorily mandated sentence of life imprisonment without possibility of parole for the felony murder conviction, life sentences on each of the kidnapping convictions, and 65 to 120 years on each of the assault with intent to commit murder convictions. On prior appeal of right, Docket No. 133519, his convictions were affirmed, but this Court vacated the 65 to 120 year sentences for the assault convictions and remanded the case for resentencing pursuant to *People v Moore*, 432 Mich 311; 439 NW2d 684 (1989).

On remand, defendant received a life sentence on each of the assault convictions. On his new appeal of right, he contends that there was no justification for an increase in punishment; therefore, he is entitled to resentencing before a different judge, so that the process will not have chilled his right of appeal or penalized him for having exercised that right as granted by Const 1963, art 1, § 20. See *People v Mazzie*, 429 Mich 29, 34-35; 413 NW2d 1 (1987).

Defendant's argument is predicated on the assumption that a life sentence is inherently a greater penalty than a term of years. This assumption is, however, not correct. *People v Carson*, 220 Mich App 662, 673; 560 NW2d 657 (1996) (special panel). Aside from the fact that whatever sentence is imposed will be subsidiary to the nonparoleable sentence defendant has received for felony murder, defendant's original 65 to 120 year sentences would have left him ineligible for parole until the expiration of 65 calendar years, less disciplinary credits. Regular disciplinary credits may not exceed five days per

month and special disciplinary credits are limited to two additional days per month and may not be awarded for any month in which a prisoner has been found guilty of a major misconduct. MCL 800.33(5); MSA 28.1403(5). This means on his original sentences defendant would not have been eligible for parole for at least fifty calendar years. MCL 791.234(2); MSA 28.2304(2). After resentencing, with life sentences defendant is eligible for parole (theoretically, ignoring the nonparoleable life sentence for felony murder) after merely serving ten calendar years of his sentence. MCL 791.234(6); MSA 28.2304(6). Defendant has therefore not received a greater sentence after resentencing and accordingly has not been penalized for exercising his right of appeal.

Affirmed.

/s/ Jane E. Markey

/s/ Martin M. Doctoroff

/s/ Michael R. Smolenski